

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

April 30, 2010

- I. **ATTENDANCE** - The Chairman called the meeting to order at 1:02 p.m. in the Council Chambers, 200 East Main Street, on April 30, 2010. Members present were Chairman Peter Brown, Louis Stout, Kathryn Moore, Jan Meyer, Noel White and James Griggs. Member Barry Stumbo was absent. Others present were Pam Brown of the Division of Building Inspection; Chuck Saylor of the Division of Engineering; Jim Gallimore of the Division of Traffic Engineering; and Rochelle Boland of the Law Department. Staff members in attendance were Jim Marx, Bill Sallee and Wanda Howard.

At this point, Chairman Brown asked all those persons present who would be speaking or offering testimony to stand, raise their right hand and be sworn.

- II. **APPROVAL OF MINUTES** - The Chairman announced that there were no minutes to be considered at this time.

III. **PUBLIC HEARING ON ZONING APPEALS**

- A. **Sounding the Agenda** - In order to expedite completion of agenda items, the Chairman sounded the agenda in regard to any postponements, withdrawals, and items requiring no discussion.

1. **Postponement or Withdrawal of any Scheduled Business Item** - The Chairman announced that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time. There were none.
2. **No Discussion Items** - The Chairman asked if there were any other agenda items where no discussion is needed...that is, (a) The staff has recommended approval of the appeal and related plan(s), (b) The appellant concurs with the staff's recommendations. Appellant waives oral presentation, but may submit written evidence for the record, (c) No one present objects to the Board acting on the matter at this time without further discussion. For any such item, the Board will proceed to take action.

ABBREVIATED HEARINGS:

- a. **V-2010-42: JASON T. REDMON** - appeals for variances to reduce the required side and rear yards from 25 feet to 10 feet in order to construct a single family residence and storage building, in the Agricultural-Rural (A-R) zone, on property located at 1206 Centerville Lane. (Council District 12)

The Staff Recommended: Approval of a side yard variance along the south property line from 25' to 10', for the following reasons:

1. Granting this variance should not adversely affect the subject or surrounding properties, nor alter the character of the vicinity, as this would be consistent with other variances granted on similarly sized lots in the area of Centerville Lane.
2. Granting one side yard variance would not result in an unreasonable circumvention of the requirements of the Zoning Ordinance, as the lot is atypical (in width) for the Agricultural Rural (A-R) zone. Lots of this width, typically, do not have two side yards as large as 25'.
3. The non-conforming size and the narrow width of this A-R zoned lot are special circumstances that contribute to justifying this side yard dimensional variance.
4. Strict application of the Zoning Ordinance would limit the ability of the appellant to construct a reasonably sized home, with an attached garage, on the subject property, and would perhaps be contrary to the stated goal of the Rural Land Management Plan to stabilize and enhance housing in the historic rural settlements of Fayette County.

This recommendation of approval is made subject to the following conditions:

1. The residence and attached garage shall be constructed in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Division of Building Inspection, prior to construction.
3. A revised site plan shall be submitted to the Division of Building Inspection prior to the issuance of any permits, which demonstrates that the accessory building on the property will comply with the required rear yard and opposite (northern) side yard setback requirements of the Zoning Ordinance. However, the accessory building *may* be located on this lot as close as 10' to the southern property line.

The Staff Recommended: Disapproval of a side yard variance along the north property line and a rear yard variance along the east property line, for the following reasons:

- a. The addition of these variances would result in an unreasonable circumvention of the requirements of the Zoning Ordinance. No other properties in the area of Centerville Lane have been approved for more than one dimensional variance, except for narrower lots (compared to the subject property) of only 38.5' and 77' in width.
- b. These additional variances are for the purposes of allowing an accessory building on the rear of the property. The subject property is configured in a way that will permit the location of this building on the lot, with some modest modifications in *either* the size or the location of the structure.
- c. There is no known record of any dimensional variances being approved previously by the Board of Adjustment specifically for accessory buildings in the area of Centerville Lane.

Chairman Brown asked whether or not there were objectors present to the subject appeal. There was no response; therefore, photos of the subject property were not presented.

Representation - Mr. Jason Redmon, appellant, was present.

Chairman Brown asked Mr. Marx to comment on the revised site plan submittal in relation to the staff's original recommendation of disapproval. Mr. Marx stated that the issue with the part of this appeal that was recommended for disapproval related to the requested variances for a proposed storage building at the rear of the property. As originally proposed, the storage building was larger than the principal residence which, in Building Inspection's determination, could not be considered accessory and would have to comply with the normal setback requirements for a principal structure. Mr. Marx said the staff recommended that the appellant consider reducing the size of the storage building to be smaller than the principal residence so it could legitimately be considered as accessory and have a setback of 18 inches all the way around; and that the appellant had agreed to make that modification, which the site plan that was distributed to the Board reflects. He said the proposed storage building was reduced in size to 2,400 square feet and the residence was about 2,600 square feet. Therefore, only one variance for the principal residence was needed along the right-hand side of the property, for which the staff recommended approval.

In response to Chairman Brown's inquiry, Mr. Marx said if this was a residential zone, the accessory storage building couldn't be any larger than half the size of the principal residence; however, in the agricultural zone, that restriction doesn't apply.

Chairman Brown asked Mr. Redmon if he was agreeable to reducing the size of the proposed storage building, in accordance with the revised site plan. Mr. Redmon responded that he was.

Since there were no further questions or discussion, the Chairman called for a motion.

Action – A motion was made by Ms. Meyer, seconded by Mr. Stout, and carried unanimously (Stumbo absent) to approve **V-2010-42: JASON T. REDMON** (a variance to reduce the required side yard from 25 feet to 10 feet in order to construct a single-family residence and storage building in the Agricultural-Rural [A-R] zone on property located at 1206 Centerville

Lane) and making note of the revised plan as recommended by staff and subject to the three conditions.

Following the vote, Ms. Boland said, to clarify the record, that it would probably be best if the applicant formally requested a withdrawal since the new plan shows that the other variances are no longer needed. Mr. Redmon complied, requesting that the rear and second side yard variances be withdrawn.

At the Chairman's request, Ms. Meyer amended the motion to include the acceptance of the two withdrawn variances, which carried unanimously.

- b. **V-2010-43: TRISHA TUNGATE / LUNCH DATE, LLC (dba THE DISH)** - appeals for a variance to reduce the required front yard from 20 feet to 8 feet in order to extend a deck as part of an existing restaurant, in a Neighborhood Business (B-1) zone, on property located at 438 South Ashland Avenue (aka 800 Euclid Avenue). (Council District 5)

The Staff Recommended: Approval of a front yard reduction from 20' to 0', for the following reasons:

1. Granting the variance will not adversely affect the subject property or surrounding properties; it will not cause a hazard or nuisance to the public, nor will it alter the character of the general vicinity. The deck does not detract but adds to the character of the neighborhood and does not interfere with pedestrian or vehicular traffic.
2. The location of the existing deck, as authorized by the Board in 1997 (Kay Doll: V-97-34), and its relationship to the existing building, is a special circumstance that contributes to justifying the requested variance.
3. Strict application of the Zoning Ordinance would prevent an expansion of the deck, which might be considered an unreasonable restriction and unnecessary hardship, given the prior action of the Board and current site conditions.
4. The need for the variance has arisen as a result of the appellant's desire to accommodate a growing business, and does not represent any intent to circumvent a requirement of the Zoning Ordinance.
5. The circumstances which apply to this property that do not apply to other properties in the general vicinity or in the same zone are: the unique location of the lot, the size of the lot and the existing structure.

This recommendation of approval is made subject to the following conditions:

1. The deck addition shall be constructed in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. The front yard building line reduction to 0' is granted only for the purpose of accommodating the proposed deck expansion.

Chairman Brown asked whether or not there were objectors present to the subject appeal. There was no response; therefore, photos of the subject property were not presented.

Representation – Ms. Caroline Meadows was present representing the appellant. She indicated that they had reviewed the conditions and agreed to abide by them.

Action – A motion was made by Ms. Moore, seconded by Mr. Stout, and carried unanimously (Stumbo absent) to approve **V-2010-43: TRISHA TUNGATE/LUNCH DATE, LLC (dba THE DISH)** (a variance to reduce the required front yard from 20 feet to 8 feet in order to extend a deck as part of an existing restaurant, in a Neighborhood Business [B-1] zone on property located at 438 South Ashland Avenue [aka 800 Euclid Avenue]) as recommended by the staff and subject to the three conditions.

- c. **CV-2010-34: EPISCOPAL DIOCESE OF LEXINGTON (ST. ANDREWS CHURCH)** - appeals for a conditional use permit to add an elevator shaft and handicap ramp; and a variance to reduce the required side street side yard along West Fourth Street to 4 feet to accommodate the addition, in a High Density Apartment (R-4) zone, on properties located at 401 and 403

North Upper Street. (Council District 1)

The Staff Recommended: Approval of the requested conditional use permit, for the following reasons:

1. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. The proposed additions are minimal in size and will improve the ability of the church to serve elderly and handicapped persons.
2. All necessary public services and facilities are available and adequate for the proposed uses.

The Staff Recommended: Approval of the requested variance, for the following reasons:

- a. Granting the requested variance should not adversely impact the public health, safety or welfare, nor alter the character of the general vicinity. Only a very short section of wall, and a portion of a small landing pad for a handicap ramp, will be located at a 4' to 6' setback from West Fourth Street. Several buildings in the immediate area have a 0' setback on West Fourth Street.
- b. The location and age of the existing building are special circumstances that contribute to justifying a building line reduction along West Fourth Street. The building was constructed many years prior to handicap accessibility becoming a significant issue, and the alignment of the existing building along West Fourth Street was approved by the Board over 50 years ago.
- c. Strict application of the Zoning Ordinance could create an unnecessary hardship for the church, as it may not be possible to find suitable alternate locations for the elevator and handicap ramp.
- d. The circumstances surrounding the requested variance have arisen as a result of the church wanting to make reasonable improvements to improve the accessibility of the church, and there is no indication of any intent to circumvent a requirement of the Zoning Ordinance.

This recommendation of approval is made subject to the following conditions:

1. The elevator and handicap ramp shall be constructed in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.

Chairman Brown asked whether or not there were objectors present to the subject appeal. There was no response; therefore, photos of the subject property were not presented.

Representation – Mr. William Stull was present on behalf of the appellant. He indicated that they had reviewed the conditions and would abide by them.

Action – A motion was made by Mr. Stout, seconded by Ms. White, and carried unanimously (Stumbo absent) to approve **CV-2010-34: EPISCOPAL DIOCESE OF LEXINGTON (ST. ANDREWS CHURCH)** (a conditional use permit to add an elevator shaft and handicap ramp; and a variance to reduce the required side street side yard along West Fourth Street to 4 feet to accommodate the addition in a High Density Apartment [R-4] zone on properties located at 401 and 403 North Upper Street) as recommended by the staff and subject to the two conditions.

- d. **C-2008-59: SOUTH ELKHORN SPIRITS** - appeals for a one-year review of a conditional use permit granted by the Board for a wine bar, in a Neighborhood Business (B-1) zone, on property located at 4379 Old Harrodsburg Road. (Council District 12)

In July 2008, the Board approved a conditional use permit for a wine bar, subject to conditions. One of those conditions was a 1-year review from the date the Certificate of Occupancy was issued to determine "any adverse impacts due to music being offered."

The Division of Building Inspection will report at the public hearing.

Mr. Marx noted that, due to a scheduling conflict, representation for the appellant was not available; but it was conveyed to the staff that they still wanted to have the review.

In response to the Chairman, Ms. Pam Brown, with the Division of Building Inspection, reported that the applicant was in compliance, and there had been no complaints with regard to music being offered.

Chairman Brown asked counsel whether any action by the Board was necessary regarding the satisfactory review. Ms. Boland responded affirmatively, noting that there needed to be something on the record. She said a motion for approval could be made with respect to a review of the conditions, and that the evidence shows the applicant is in compliance.

Action - A motion to that effect was made by Mr. Stout, seconded by Mr. Griggs, and carried unanimously (Stumbo absent).

- e. **C-2010-23: FREDERICK COTTON** - appeals for a conditional use permit to provide family child care for up to 12 children, in a Two-Family Residential (R-2) zone, on property located at 843 Georgetown Street. (Council District 2)

The Staff Recommended: Approval, for the following reasons:

1. Providing family child care for up to 12 children at this location during normal working hours on Monday through Friday should not adversely affect the subject or the surrounding properties. Minimum off-street parking requirements will be satisfied, with a parking and turnaround area to be provided that will result (in most instances) in parents/guardians being able to exit the property without backing onto Bradley Court. The outdoor play area to be provided (a minimum of 600 square feet) will exceed the minimum requirements of the Zoning Ordinance (300 square feet).
2. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. Family child care for up to 12 children may be provided in accordance with the submitted application and revised site plan dated April 19, 2010, with care to be provided on Monday through Friday from 6:00 AM to 6:00 PM.
2. All necessary permits, including an occupancy permit, shall be obtained from the Division of Building Inspection prior to any paving and prior to opening the facility.
3. A fenced outdoor play area of at least 600 square feet shall be provided and maintained in accordance with the requirements of the Division of Building Inspection.
4. Care to be provided shall at all times comply with the requirements of the Kentucky Cabinet for Health and Family Services.
5. This conditional use shall become null and void should the appellant no longer own this property or reside at this location.

Chairman Brown asked whether or not there were objectors present to the subject appeal. There was no response; therefore, photos of the subject property were not presented.

Representation – Mr. Frederick Cotton, appellant, was present. He indicated that he had reviewed the conditions and agreed to abide by them.

Chairman Brown related his understanding that a daycare is currently being operated for six children on the property. Mr. Cotton responded affirmatively. Chairman Brown said that during his site visit, he noticed that some fencing in the back yard was missing. Mr. Cotton explained that he had taken down the fence in anticipation of the recommendation(s) that the Traffic Engineering and Planning staff would make following their site visit with regard to the proposed parking/turnaround area; and that the fencing hadn't been put back up mainly because of that. Chairman Brown queried whether a fenced play area was required for a daycare with six children. Mr. Cotton said yes, reiterating the reason for having removed the fence, to show how/where he intended to construct the parking/turnaround area.

Mr. Marx verified that when he and Mr. Gallimore went out to do the site inspection, there was an issue with whether or not the back section of the fence would have to be relocated; and that they actually advised Mr. Cotton not to put the fence back up because it might have to be moved (from the original location) to accommodate the parking/turnaround area and separate the outdoor play area from the parking area. Mr. Marx noted, with regard to the Zoning Ordinance, that there was not a requirement for a fenced play area for up to six children although the State's licensing requirement may be different.

For clarification, Ms. Moore asked whether the reason the fence was taken down was because of the possibility of more paving. Mr. Cotton responded that was correct. Ms. Moore then asked how many of the children currently in the daycare were dropped off by car. Mr. Cotton said only one of the six children was dropped off by a parent who drives to the facility; and that the other children usually are picked up either by his wife or him.

Chairman Brown asked whether Mr. Gallimore had anything further to add. Mr. Gallimore reiterated about the site visit to the property located on Georgetown Street, to evaluate the space for the proposed parking/turnaround area. He spoke about vehicular access to the property via Bradley Court, which is a short truncated street with very low traffic volume, and noted that it is a pretty good place for parents to stop and bring their children through the access at the back of the property. He stated that the partially paved driveway is a little rough; and although there is not enough room in the proposed parking/turnaround area for two or three vehicles to park and easily maneuver (without relocating the rear fence much closer to the residence), it can be used. However, he said that on-street parking probably is a better solution.

Mr. Stout inquired whether the applicant would be required to put the fence back up. Mr. Marx responded yes, that they would have to have a secure fenced play area all the way around, in accordance with Condition #3.

Action – A motion was made by Mr. Griggs, and seconded by Ms. Moore to approve **C-2010-23: FREDERICK COTTON** (a conditional use permit to provide family child care for up to 12 children in a Two-Family Residential [R-2] zone on property located at 843 Georgetown Street) based on the staff's recommendation and subject to the five conditions.

The votes were as follows:

Ayes: Stout, Moore, Meyer, White, Griggs

Nay: Brown

Absent: Stumbo

The motion for approval carried, 5 to 1.

- f. **C-2010-32: CONSOLIDATED BAPTIST CHURCH** - appeals for a conditional use permit to operate a summer camp and an after-school child care program, in an Agricultural-Urban (A-U) zone, on property located at 1625 Russell Cave Road. (Council District 2)

The Staff Recommended: Approval, for the following reasons:

1. Granting the requested conditional use permit should not adversely impact the subject or surrounding properties. Adequate off-street parking and a safe drop-off and pick-up location for children already exist, and are conveniently located to the rear of the building to be occupied for child care purposes. Disturbances from noise and general

activity are not expected, since most activities will be conducted inside of the building, and there are no residences in close proximity to the church.

2. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The summer camp and after-school programs shall be established in accordance with the submitted application and site plan.
2. An occupancy permit shall be obtained from the Division of Building Inspection prior to beginning the proposed programs.
3. Enrollment shall be limited to no more than 120 children for the summer camp and no more than 80 children for the after school-program.
4. The programs shall be established and operated in accordance with the licensing requirements of the Kentucky Cabinet for Health and Family Services.

Chairman Brown asked whether or not there were objectors present to the subject appeal. There was no response; therefore, photos of the subject property were not presented.

Representation – Mr. Robert Moore was present on behalf of the appellant. He indicated, when asked, that they had reviewed the conditions and would abide by them.

Action – A motion was made by Ms. Meyer, seconded by Mr. Stout, and carried unanimously (Stumbo absent) to approve **C-2010-32: CONSOLIDATED BAPTIST CHURCH** (a conditional use permit to operate a summer camp and an after-school child care program in an Agricultural-Urban [A-U] zone on property located at 1625 Russell Cave Road) as recommended by staff and subject to the four conditions.

Chairman Brown asked if there would be an outdoor play area of any kind. Mr. Moore responded no, adding that they have a very large gym and this is only for a short time.

- g. **C-2010-33: PROVIDENCE MONTESSORI SCHOOL, INC.** - appeals for a conditional use permit to reconfigure a previously approved parking and access plan, in a Single-Family Residential (R-1C) and a Planned Neighborhood Residential (R-3) zone, on property located at 1209 Texaco Road. (Council District 2)

The Staff Recommended: Approval, for the following reasons:

1. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. The current proposal for parking and access will result in much greater stacking space for vehicles, as well as some additional off-street parking spaces. Additional property purchased by the school has eliminated the potential for disturbing an isolated residential use surrounded by school activities.
2. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The parking and access improvements shall be undertaken in accordance with a revised site plan indicating that all proposed off-street parking spaces are located outside of the 30' front yard associated with Texaco Road.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
4. All parking areas shall be paved, with spaces delineated, and landscaped/screened in accordance with the provisions of Articles 16 and 18 of the Zoning Ordinance.
5. The final design of the new access and parking areas shall be subject to review and approval by the Division of Traffic Engineering.
6. Any pole lighting for the parking areas shall be of a shoebox (or similar) design, with light shielded and directed downward to avoid disturbing adjoining and nearby residential properties.

Chairman Brown asked whether or not there were objectors present to the subject appeal. There was no response; therefore, photos of the subject property were not presented.

Representation – Mr. Bill Esarey, landscape architect with Wee Landscape Architecture, was present on behalf of the appellant. He indicated that they had reviewed the conditions and agreed to abide by them.

Mr. Marx referenced the revised site plan in the Board's packet. He said, with respect to the original site plan, that there was an issue with some of the parking spaces being within the 30-foot setback along Texaco Road. Since the plan has now been modified to get all the parking spaces outside of the 30-foot setback area, he suggested that Condition #1 be amended, as follows: "The parking and access improvements shall be undertaken in accordance with the revised site plan dated April 28, 2010."

Action – A motion was made by Mr. Stout, seconded by Ms. White, and carried unanimously (Stumbo absent) to approve **C-2010-33: PROVIDENCE MONTESSORI SCHOOL, INC.** (a conditional use permit to reconfigure a previously approved parking and access plan in a Single-Family Residential [R-1C] and a Planned Neighborhood Residential [R-3] zone on property located at 1209 Texaco Road) as recommended by the staff and subject to the six conditions, including the amendment of Condition #1 as stated herein.

- h. **C-2010-35: CREATION KINGDOM FAIRWAY, LLC** - appeals for a conditional use permit to establish a school for academic instruction, in a Single-Family Residential (R-1C) zone, on property located at 350 Henry Clay Boulevard. (Council District 5)

The Staff Recommended: Approval, for the following reasons:

1. A private school for academic instruction and child care center at this location should benefit the community, and not adversely affect any of the surrounding properties. An existing building, formerly used for a public elementary school, will be used, without the need for any expansion or major exterior renovations. Adequate off-street parking is already available, and an existing circle drive at the front of the building will continue to function as a drop-off and pick-up location for children and students. All of the outdoor play and recreation areas will be fenced, which should help to protect residential properties that adjoin those areas.
2. All necessary public facilities and services are available and adequate for the proposed uses.

This recommendation of approval is made subject to the following conditions:

1. The facility, to include care and educational programs for infants through children of middle school age, shall be established in accordance with the submitted application (including the supplemental letter of April 14, 2010) and site plan.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to any renovations, fence construction, or occupancy of the building.
3. Enrollment in the various programs and the allocation of space shall be managed for the facility as a whole to ensure that (a) minimum off-street parking requirements are satisfied based on a total of 86 off-street parking spaces being available, and that (b) required off-street parking for the child care portion of the facility (infants through kindergarten) does not exceed 75% of the off-street parking that is required for the school portion of the facility (elementary and middle school). Records shall be maintained by the appellant, subject to review by the Division of Building Inspection, to document compliance with these requirements.
4. A minimum of 25 square feet of outdoor play area shall be provided for every child that is enrolled in the child care, to be fenced and screened in accordance with the requirements of the Division of Building Inspection.
5. The facility shall be established and maintained at all times in compliance with the requirements of the Kentucky Cabinet for Health and Family Services.

Chairman Brown asked whether or not there were objectors present to the subject appeal.

There was no response; therefore, photos of the subject property were not presented.

Representation – Mr. James Thompson was present on the appellant's behalf. A brochure was distributed to the Board for review. In response to the Chairman, Mr. Thompson indicated that attorney Bruce Simpson would not be representing them in this case.

Chairman Brown asked whether Creation Kingdom has any other facilities. Mr. Thompson responded that they did, in Georgetown; in Lexington on Mercer Road and in the Millpond Shopping Center on Boston Road; one at Brannon Crossing; and one that is under construction in Hamburg. Secondly, Chairman Brown asked whether all of the facilities offer after-school programs. Mr. Thompson replied yes. Chairman Brown then asked if any had a Montessori school program, to which Mr. Thompson responded no. When asked by the Chairman whether he would agree to abide by the conditions for approval, Mr. Thompson responded no, saying he needed an explanation as to how this would work.

Mr. Thompson stated that they originally planned to have a similar Creation Kingdom center as they do now at the other locations. He noted that this is an unusual facility because normally the centers are anywhere from 12,000 to 14,000 square feet in size; but the existing building on this property is about 74,000 square feet, and they would have to do more than what is typical of their other centers in order to pay for the building, such as renting out the unused portions. It was noted that most of the centers have a capacity of 184 children (full-time students); and the first floor of the former Julia R. Ewan School could accommodate 212 children, which is the most they are anticipating. He spoke about the inquiries they had received about possibly merging with an elementary or larger school, or having a Montessori school. They decided to add to the application that they have the ability to continue to build the proposed school into larger grades, whether it was a Montessori or whatever type of school, to make full use of the existing building. He said the way the conditional uses read, child care can be used in conjunction with a school, which he thought would provide some flexibility; and that they would start with what they know first and then add the school as they develop the curriculum. However, Building Inspection has said they will be unable to get approval for the early education center (child care use), which the applicant believes is a school, until such time as the school for upper grades beyond kindergarten is started. Mr. Thompson noted that they had not anticipated this, nor could they afford to do it that way.

Mr. Marx responded that Building Inspection made the determination in order to ensure that the child care portion of this, which includes infants through kindergarten-aged children, is truly accessory to the school portion for elementary and middle school-aged children. He said the only way to handle that is to make sure that a certificate of occupancy for the school portion is issued either concurrently with the child care use or prior to. Beyond that determination, he said there are questions about what the applicant would have to document in order to get a certificate of occupancy for the school.

Mr. Thompson said that would make it difficult for them to do this if the school has to come before what they've already spent hundreds of thousands of dollars developing; and that they can't sit there in a 74,000 square-foot building and pay \$10,000 a month in utility charges, hire and pay 40 people, and not be able to operate. He said this is a wonderful old building that needs to be kept and used, which the neighborhood supported; and he wished to contest the issue and say why he felt their proposal should not have those kinds of restrictions.

Chairman Brown commented that Mr. Thompson was welcome to contest it, but he didn't think the Board had the authority to grant what was being proposed.

Ms. Moore related her understanding that this could be accessory to either a school or a church. She said she understood Mr. Thompson's concern that it would cost a lot of money to get a school running. She asked if the applicant had any kind of affiliation with a church. Mr. Thompson responded that they did not.

Mr. Thompson said he would feel much better if he could get some answers to these questions. Chairman Brown felt it might be better to continue this matter and let Mr. Thompson meet with Mr. Marx and the staff. Mr. Thompson said he thought the code allows

exactly what they're doing.

Chairman Brown asked if the number of children in the school would have to exceed the children in the daycare. Mr. Marx responded not necessarily.

Mr. Thompson said he had read over the regulations very carefully regarding conditional uses allowed, which include kindergartens and nursery schools up to a certain number; and it also includes kindergartens and nursery schools as an accessory to a church, school or private club. He said, with regard to schools of academic instruction, that Building Inspection has taken a literal interpretation and decided theirs is not a school of academic instruction, even though they have a curriculum. Also allowed is family child care for 7 and not more than 12 children. So, this area does allow for child care with enrollment limits because it's a residential area and you don't want 100 kids at someone's house. But no one anticipated a 74,000 square-foot school in the middle of this residential area, which can easily hold a lot more children. He said the Ordinance addresses conditional uses or substantially similar to conditional uses that can be approved. He argued that if nursery schools are approved, then their school certainly is substantially similar in use. And if you look at the definition of "substantially", it says to a great extent or degree. To be similar, it's "related in appearance or nature", and the number of children really is the only difference. He said the only difference he was requesting was the number of children (212), which is more than what this allows, because of the 74,000 square-foot school building. He asked how this could not be more similar, and how the Board would not have the authority to grant this.

Mr. Marx said, with respect to the Zoning Ordinance, that the "substantially similar" clause generally is put in there to address situations where there's a particular use that's not specifically identified, and how that is handled. He explained that you look for uses that might be really similar to that and treat them accordingly. In this case, there's no question about what the use is. He referred to the staff report, under Zoning Ordinance provisions, where it specifically addresses kindergartens, nursery schools and child care centers for 4 or more children, which has to be accessory to a church, school or private club.

Chairman Brown asked whether the staff's recommendation was still for approval, considering Mr. Thompson's admission that this is primarily going to be daycare and then develop a school later on. Mr. Marx responded that the staff was still recommending approval, but with the understanding that Building Inspection is going to have to issue their certificates of occupancy and address the timing of that.

Mr. Stout noted that there seemed to be some confusion as to what would be acceptable to Building Inspection versus what the applicant was actually proposing to do regarding the development of the school use(s).

Mr. Thompson said it was stated in the submitted letter of scenario that they would start their own school, possibly with limited immediate enrollment, and then the larger school, because that school was developing primarily as the younger students are ready to move into the elementary school. He said he didn't think there was any misunderstanding, because this is what he stated from the beginning, and it was also in the staff report.

Mr. Thompson went on to say that according to the Zoning Ordinance, they can do this as an adjunct to a private club. He asked if that meant they could start a private club in one room of the building, instead of a daycare (as Building Inspection calls it, which he didn't agree with). Since it can be adjunct to a church, he said if they start a church, then it would be accessory. He asked if that would be easier than going through these other steps; and if so, he wanted to get approved as accessory to a church or club.

Mr. Saltee said, since all are conditional uses, he thought that request was within the Board's purview to consider.

Mr. Marx pointed out to Mr. Thompson that if he did decide to go that route, it still would be necessary to apply for a conditional use for a church or a private club and go through this

same process, including re-notice to neighbors, which was not something Mr. Thompson could do today.

Chairman Brown asked if Mr. Thompson was telling the Board that he would not abide by the five recommended conditions for approval. Mr. Thompson said he didn't know, but this is what he would like to do in order to revitalize the school building and the neighborhood, and provide 80 potential new jobs. He said Building Inspection was taking specific definitions and hanging onto them, which he disagreed with.

Ms. Amy Mester was also present on behalf of the appellant. She said the ultimate question was whether they can start with the childcare this fall and grow, knowing that the school subsequently is coming in as they get more children.

Mr. Saltee said he thought that possibility was recognized in the staff report and in the recommendation; but what has transpired this week is that Building Inspection said they will not issue occupancy permits for that scenario.

Mr. Thompson said that was what he was trying to get straight, because he didn't understand. Building Inspection said they would not issue the occupancy permit for what they call a child care until they issue an occupancy permit for the school. Mr. Saltee said that was the Planning staff's understanding.

Mr. Stout said he had a concern regarding their request to establish a school for academic instruction, but yet Mr. Thompson was asking if they could use it for child care. Mr. Thompson responded that they were only saying child care because that's what Building Inspection called it; and that he has maintained all along that it is an early education center with a curriculum, and it is a school. However, he said based on the strict definition that is used and as stated in the staff report, a school is a place of education and can only start at the elementary level. He maintained that they are a school; that their slogan is educational learning; that they have a curriculum; and the "baby signs" program is taught from infancy. He said he didn't understand the purpose of all this and why ways were being found to not allow the school to go in, particularly since the 74,000 square-foot building is already there and the community supports the proposal.

Ms. Pam Brown, with Building Inspection, commented that the applicant was talking about almost a year-and-a-half before the proposed school section would be open; and they had no guarantee that that would actually happen as anticipated, which was of concern. She said they probably would not be opposed to this happening at all if, on August 15, for example, or whatever the first day is for public schools to open, the applicant's school doors would be open as well.

Mr. Thompson responded that they have a 74,000 square-foot building, 24,000 square feet of which is designated for the early education center that they consider a school, but other people are calling a daycare. And, they've got to pay for the building, but didn't want to rent it because that was too problematic; and they would do better if they started their own school. He said his daughter's goal, who also is his partner, was to start a school all the way through elementary. In any case, they need to turn it into a school to fill up the rest of that space and have it reach its profit potential. They have no problem saying that they will have the school; but it would have to be in gradations since the time for enrollment has already passed for public schools, and people have already made their decisions for next fall. He said the building isn't going to sit there and wait; and he couldn't pay millions of dollars for the building and upgrade it before next fall.

Ms. Brown said she understood Mr. Thompson's plight. Mr. Thompson said they can and would be happy to make that commitment to them saying they would not expand out of a certain area; and the rest of the area will be reserved for school use and nothing else. Ms. Brown reiterated that a year-and-a-half was a long time to go without having their primary operation.

Mr. Saltee asked Mr. Thompson if the facility would have a kindergarten, to which he replied

yes. Mr. Sallee then asked whether the kindergarten will start right away. Mr. Thompson responded affirmatively. Mr. Sallee noted that there were some citizens present who also wished to speak regarding this matter.

Chairman Brown asked whether Mr. Thompson wanted to continue with the hearing today, allowing the citizens present to speak and the Board to reach a decision; or if he preferred a continuance of this matter for a month so he could meet with Building Inspection and Planning staff for further discussion of his proposal.

Mr. Marx said he knew that timing was a big issue here, and the next meeting would be a week earlier than normal, on May 21st.

Mr. Thompson stressed the importance of getting the proposed school started by the time the public schools are in session, to be able to tell people about enrolling; and that even a three-week delay was not good. He asked, if they went ahead with the hearing (letting the citizens present speak and taking a vote) with the five proposed conditions, and were to discuss with the Building Inspector exactly what they have to do in between now and the next meeting, if it be possible to come back and add that they also wanted approval as accessory to a church or private club.

Chairman Brown responded that he didn't think the Board could piece-meal like that. Mr. Marx noted that requesting a new use would present a timing problem, because the filing deadline for conditional uses had passed, which would put it into June.

Ms. Mester asked, if the Board voted to deny their request, whether they could come back after talking to Building Inspection. Ms. Moore said if it is substantially different, they can; but if not, they can't.

Ms. Boland explained that if they came back with the exact same application, for a school for academic instruction with an accessory childcare, there would be a one-year delay before they could apply for that. But, if they came back with a private club or church with an accessory daycare, which is not what they applied for today, it would not be barred and there would be no delay in reapplying for that.

Mr. Thompson stated that there was no way he would buy the building and start this school knowing that they had to get the other school started first. He felt this was a moot point.

Ms. Boland said if the Board were to continue this for 30 days, she would participate with the staff and Building Inspection to see if there was any way they could work with the applicant within the framing of the Zoning Ordinance. She thought it might be worth trying.

Mr. Thompson asked if it would be better to have the Board vote with the conditions in and then try to work it out. Ms. Boland said she thought Mr. Thompson would need to have a decision from the Board of Adjustment that allows him specifically to do what he plans to do. Mr. Thompson replied that he thought a continuance was the best thing.

For clarification, Chairman Brown asked Mr. Thompson if he was requesting a continuance of this matter to the next meeting. He responded affirmatively.

Action – A motion was made by Mr. Stout, seconded by Ms. Meyer, and carried unanimously (Stumbo absent) to continue **C-2010-35: CREATION KINGDOM FAIRWAY, LLC** until the May 21st meeting.

- h. **A-2010-36: PAUL and JANIS McCARTY** - appeal for an administrative review to determine that a non-conforming residential use may be reestablished, in a Neighborhood Business (B-1) zone, on property located at 1406 Bryan Avenue. (Council District 1)

The Staff Recommended: Approval, and that the decision of the Division of Building Inspection be overturned, for the following reasons:

1. There is no evidence that the appellants ever intended to totally abandon a residential use of the subject property. As a rehabilitation home, its fundamental use was still residential; and the number of authorized residents (eight), while used as a rehabilitation home, is comparable to what might be reasonably expected if the two dwellings on the subject property were used for single family residential purposes.
2. The character of this particular neighborhood, although comprised of several contiguous properties that are located in a Neighborhood Business (B-1) zone, is primarily residential; and many properties either adjacent to or within the immediate area of the subject property have nonconforming residential uses. Converting the two dwellings on the subject property back to a single family residential use will be compatible with the established character of the neighborhood.
3. The existing buildings are relatively small and were constructed as single family residences, and would be difficult to adaptively re-use for a business use. Also, the narrow shape and small size of the subject property is not conducive to providing off-street parking that would be desirable and required for a business use.
4. Approval of the subject appeal will not be in violation of any provision contained in Article 4-3 of the Zoning Ordinance relating to the regulation of nonconforming uses.

The Division of Building Inspection will report at the public hearing.

Chairman Brown asked whether or not there were objectors present. There was no response; therefore, photos of the subject property were not presented.

Representation – Janis and Paul McCarty, appellants, were present.

Chairman Brown noted that the staff had recommended approval of the appellants' request. He asked for comment from the Building Inspection staff. Ms. Brown stated that Building Inspection actually had no objection to this because, as a rehabilitation home, its fundamental use was still residential.

Since there was no other discussion or further comment from staff, the Chairman called for a motion.

Action – A motion was made by Mr. Stout, seconded by Mr. Griggs, and carried unanimously (Stumbo absent) to approve **A-2010-36: PAUL AND JANIS McCARTY** (an administrative review to determine that a nonconforming residential use may be reestablished in a Neighborhood Business [B-1] zone on property located at 1406 Bryan Avenue) for the reasons recommended by the staff.

- j. **A-2010-39: CURTIS GREEN, LLC** - appeals for an administrative review to allow two wall signs on a single wall elevation in a Highway Service Business (B-3) zone, on property located at 630 East New Circle Road. (Council District 1)

The Staff Recommended: Approval, and that the decision of the Division of Building Inspection be overturned, for the following reasons:

1. The total number of signs proposed for the three wall elevations facing East New Circle Road (three), with two on one wall elevation, will not exceed the maximum number permitted by Article 17 of the Zoning Ordinance for wall signage in the B-3 zone. Thus, the signs proposed will comply with the limitations under Article 17-8(a).
2. The combined total size of the two wall signs proposed for the middle wall elevation will not exceed that allowed by Article 17 of the Zoning Ordinance (15% of the wall area).

This recommendation of approval is made subject to the following conditions:

1. Signage may be placed on the wall elevations facing East New Circle Road in accordance with the submitted application and site plan.
2. A sign permit shall be obtained from the Division of Building Inspection prior to erecting the signs.
3. Signage shall not exceed 15% of the wall area as determined by the Division of Building Inspection.
4. The right wall elevation shall not have any wall signage.

The Division of Building Inspection will report at the public hearing.

Chairman Brown asked whether or not there were objectors present to the subject appeal. There was no response; therefore, photos of the subject property were not presented.

Representation – Mr. Michael Ayres was present on the appellant's behalf. He indicated that he had reviewed the conditions and agreed to abide by them.

Action – A motion was made by Ms. Meyer, seconded by Ms. White, and carried unanimously (Stumbo absent) to approve **A-2010-39: CURTIS GREEN, LLC** (an administrative review to allow two wall signs on a single wall elevation in a Highway Service Business [B-3] zone on property located at 630 East New Circle Road) as recommended by the staff and subject to the four conditions.

- k. **A-2010-40: CURTIS GREEN, LLC** - appeals for an administrative review to allow three wall signs on a single wall elevation in a Wholesale and Warehouse Business (B-4) zone, on property located at 646 East New Circle Road. (Council District 1)

The Staff Recommended: Approval and that the decision of the Division of Building Inspection be overturned, for the following reasons:

1. The total number of signs proposed for the front wall elevation facing East New Circle Road (three) will not exceed the maximum number permitted by Article 17 of the Zoning Ordinance for wall signage on this particular building in a B-4 zone.
2. The combined total size of the three proposed wall signs will not exceed that allowed by Article 17 of the Zoning Ordinance (15% of the wall area), nor be in violation of Article 17-8(a).

This recommendation of approval is made subject to the following conditions:

1. Signage may be placed on the wall elevation facing East New Circle Road in accordance with the submitted application and site plan.
2. A sign permit shall be obtained from the Division of Building Inspection prior to erecting the signs.
3. Signage shall not exceed 15% of the wall area as determined by the Division of Building Inspection.
4. The right section of the front wall elevation facing New Circle Road shall not have any wall signage.
5. Wall signage shall not be placed on the building wall that faces Industry Road.

The Division of Building Inspection will report at the public hearing.

Chairman Brown asked whether or not there were objectors present to the subject appeal. There was no response; therefore, photos of the subject property were not presented.

Representation – Mr. Michael Ayres was present on the appellant's behalf. He indicated that he had reviewed the five conditions for approval and agreed to abide by them.

Action – A motion was made by Mr. Griggs, seconded by Mr. Stout, and carried unanimously (Stumbo absent) to approve **A-2010-40: CURTIS GREEN, LLC** (an administrative review to allow three wall signs on a single wall elevation in a Wholesale and Warehouse Business [B-4] zone on property located at 646 East New Circle Road) based on the staff's recommendation and subject to the five conditions.

- B. **Transcript or Witnesses** - The Chairman announced that any applicant or objector to any appeal before the Board is entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn.
- C. **Variance Appeals** - As required by KRS 100.243, in the consideration of variance appeals before the granting or denying of any variance the Board must find:

That the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Board shall consider whether:

- (a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
- (b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
- (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulations from which relief is sought.

D. **Conditional Use Appeals**

There were none remaining.

E. **Administrative Review**

1. **A-2010-37: MICHAEL MORRISON** - appeals for an administrative review to determine that a single family residential use should be allowed as a continuation of a non-conforming use, in a Professional Office/Historic District Overlay (P-1/H-1) zone, on property located at 171 Woodland Avenue (Council District 3).

The Staff Recommended: Approval, and that the decision of the Division of Building Inspection be overturned, for the following reasons:

- a. There is no evidence that the appellant or a prior owner ever intended to totally abandon a residential use of the subject property. Although the nature of the residential use may have changed over time, the fundamental use of the subject property has been for residential purposes.
- b. Use of the dwelling on the subject property as a single family residence will be compatible with the established character of the neighborhood, and should not adversely affect the existing or future development of the property or the surrounding area.
- c. The existing building was constructed as a single family residence, was permitted to modernize a first floor kitchen (in 2005), and might be difficult to adaptively re-use for a business use since the lot is not conducive to providing off-street parking that would be desirable and/or required for a business.

The Division of Building Inspection will report at the public hearing.

Representation – Mr. Michael Morrison, appellant, was present. He noted, when asked by the Chairman, that one of the two objectors present were no longer opposed to this request. Chairman Brown asked to hear the remaining objector's comments first.

Opposition - Mr. Lionel Hawes, 169 Kentucky Avenue, in the Aylesford Historic District, was present. He said this district is beset with increasing density as a bedroom community for the University of KY for 9 months out of the year; and this (appeal) is just one more step to increase the density in the neighborhood. He said the application states that this is a continuation of a nonconforming use. He felt this was incorrect, because the most recent use of the property was a boarding house that was shut down by the City less than 6 months ago. Prior to that, it served as a construction and rental office for an apartment complex at the corner of Woodland and East High Street; and prior to that, it was vacant for a number of years. Therefore, Mr. Hawes didn't think it was a continuing use as a single-family dwelling. He went on to say that, although Mr. Morrison gave his assurance that he does not intend to use the property as a boarding house or lodging residence, the "for sale" sign on the property was not very reassuring, considering that the use by the new owner is uncertain. He asked, if the property is to be changed to a single-family residence, why not just change the zoning for

that purpose. He said if the Board approves this change as a nonconforming use, the property could be used by the new owner as professional/commercial property or a single-family dwelling. He said the fundamental problem they have in the neighborhood is not whether this is a professional office or single-family use, but rather that the infrastructure of the neighborhood is not equipped to deal with the high density of residents in the area. Considering the most recent action by the Council, he said four unrelated people can live in a single-family residence or apply for some sort of conditional expansion, and that meant at least four more cars on the street on Woodland Avenue. Mr. Hawes pointed out that the building already has four electric meters, which indicates that there wouldn't be any shared common expenses by four unrelated people living together; and that Code Enforcement has already conceded that they would be unable to enforce the code, so four or as many as 10 people could be living there.

Another concern Mr. Hawes spoke about was the intersection of Woodland and High Street, which is already highly congested due, in part, to the proximity of a school where children are being dropped off/picked up daily. He said Woodland Avenue was not designed to have parking on both sides of the street and two-way traffic, noting that it serves as a major connector to the University of KY and is highly traveled. In closing, he reiterated that the infrastructure of the Aylesford Historic District will not support any further encroachment of increasing density in the area, which was his main objection to this proposal. He urged the Board to support the initial recommendation of the Division of Building Inspection.

Mr. Griggs said that he concurred with Mr. Hawes' comment that a zone change could be requested if the applicant wants to use this as a single-family home. He also noted having seen the "for sale" sign during his site visit that advertised this as professional office space. Mr. Griggs asked if, "in a perfect world", Mr. Hawes would like to see this property occupied by a single family. Mr. Hawes responded yes, according to the common definition by most people, but not what was adopted by Council. However, he said if it was occupied as an office, there would not be four cars parking on the street day and night as well as Saturdays and Sundays, and it would be less disruptive to the neighborhood.

Ms. Moore referred to Article 8-15(b)(16), which she noted allows dwellings as a principal permitted use as long as they are not on the first floor. She asked counsel if this were sold and the first floor was used for professional purposes, could there be multiple separate units. Ms. Boland responded absolutely. She said the way it is currently zoned, setting aside whether the required parking is available or not, the use that would be allowed there would be professional office on the first floor and as many dwelling units on the second and third floors as the parking would allow. So, it actually allows a great deal more density to compel the applicant to use it in the professional office manner. She related her understanding, after receiving communication from Mr. Morrison and his prospective buyer, that the buyer wants to purchase this home for his family to live in. Ms. Boland said they felt that, in looking at the facts of this, the first floor was used as a display area in connection with the construction on the neighboring lot, although there was no certificate of occupancy actually issued for this temporary use; and it was more comparable to a real estate office, where a residence in a real estate development is used for a sales office temporarily. She said that is why they felt comfortable recommending approval because, in effect, this use would have a lot less impact on the neighborhood by returning it to single family. Further, they were concerned that requiring a complete zone change, although it may well be justified and eventually be approved, would end up being such a procedure that it would discourage the property owner from taking the steps to return it to single family. Ms. Boland acknowledged that this was used as a lodging house in the past, which was illegal and permanently closed down.

Mr. Griggs noted, for those who had not visited the site, that the parking was very limited in the rear. With respect to the office space below and apartments above, he felt there would be a pretty minimal amount of residential uses allowed. Ms. Boland said it might only be one or two units, but she felt that one residential unit plus office space below would still be more intensive than a single family living there.

Chairman Brown briefly spoke about his familiarity with this area, having lived on Kentucky Avenue and having a daughter who attends Maxwell Elementary School. Referring to an aerial photo of the property that was provided, he asked about the location of the parking, which Mr. Morrison pointed out using a photo shown on the overhead (along the right side and behind the building, underneath

the deck).

Mr. Morrison commented that he shared Mr. Hawes' concern about the density issue, which he didn't dispute at all. However, he said the assumption that was made that this property is for students only is not the case. He said the density issue is created by students living there; and that his intention is to get this approved today in order to get the property sold and used as a single-family residence. He stated that there is a lot of interest from the single-family residential perspective, but limited interest from a commercial perspective for the property in question.

Chairman Brown asked counsel whether the Board would be able to review this to determine whether the property is actually being used as the applicant proposes. Ms. Boland responded that it would only be used legally as single-family residential if the Board finds that the nonconforming use has not been abandoned; and if it is not used as single-family residential, it can only be used in the ways that conform to the P-1 zoning. Therefore, anything else would be a violation. She reiterated that it could only be single family, based on the Board's decision today if approved; or P-1 uses, both principal and conditional, that are allowed under the zoning that covers the property. In response to the Chairman's further inquiry, Ms. Boland said it could not be an apartment building, a duplex or multiple family; and the only way they could have multiple residential units is if they go back and conform to the P-1 use and have an office type use on the first floor. They would then have the ability as a principal permitted use to put dwellings above it.

Ms. Moore asked about the status of the text amendment regarding the definition of "single family". Ms. Boland said it is now before the Planning Commission, noting the hearing they had on the 28th that was continued and the work session they had to discuss it. She said the hearing will resume on May 13th, which is the deadline for the Planning Commission to make a decision and return its recommendation to the Council for their final decision. Ms. Moore related her understanding that, if the property in question was purchased tomorrow, the new definition would not apply. Ms. Boland concurred, but noted the complexity of the text amendment. She said she didn't believe that the applicant has the situation where he could apply for the exception, which she explained. She said there is an exception for dwellings that have been occupied by more than four unrelated adults in the past that would have to be illegal occupancy; and they would take the position, based on the court case that the 9 students living there at the time they pursued that situation, were not legal. Ms. Boland stated that they are not taking the position that there is a traditional grandfathering because, in essence, they are clarifying their definition that unrelated people who were not living together as a family were never allowed in a single-family residential zone.

Mr. Morrison commented that he has two options regarding the asset that he purchased at 171 Woodland: 1) to get the Board's approval today to make it single-family residential; and 2) to have an upstairs rental unit. He stated if the building is kept as it is today, the first floor would be professional and upstairs would be students or anyone else who wanted to live there. He said, in his mind, single-family residential was the most beneficial for all.

In response to Chairman Brown's inquiry, Mr. Hawes stated that the Board needs to take into consideration that single family, under the pending definition, does not meet with the common usage of the term "single family" and it includes 4 people. He said Code Enforcement has testified in hearings before the Council that they cannot enforce the limit of the number of people living in a dwelling. At this point, he said he wasn't sure whether counsel indicated that the new definition would be applicable to this property or not. Ms. Boland clarified that it would be applicable. Continuing, Mr. Hawes said even if you allow four more people and four more cars (which would generate more traffic in the area), with 9 bedrooms, there are liable to be more people in there; and Code Enforcement feels that they have their hands tied. He said whether there would be an increase in traffic and parking problems, if it were kept as professional, would depend somewhat on the nature of the business that goes in there.

Chairman Brown then asked if Mr. Hawes was aware that the Board can review these cases, where Building Inspection goes to inspect the property beforehand, to ensure that all applicable conditions are being met. Mr. Hawes said he was told by Code Enforcement that they have to have probable cause to believe there is a violation in either the number of people, or a problem involving safety violations regarding the fire code, electrical code, etc. He said the fact that there are four electric meters on the side of the building apparently does not give them probable cause.

For clarification, Ms. Boland commented that in this case, the Board would be finding that single-family use is being recognized as being grandfathered in, which is not like a conditional use where conditions can be imposed on it or a variance. She went on to say that if Building Inspection received complaints that there are a number of what appear to be unrelated adults residing in that structure, they would proceed to check into it; and as they did, reflect the litigation in the past.

Ms. Moore asked counsel whether parking restrictions would apply if this is used for P-1, limiting the number of people that live there. Ms. Boland responded that was correct. She then asked if there are similar restrictions on parking with respect to a single-family residential use. Ms. Boland said Building Inspection would have to answer that; but she replied yes there are, depending on whether it is in an Infill and Redevelopment area. She said she wasn't really familiar with all the details and nuances of the parking provisions in residential.

Ms. Brown, with Building Inspection, responded that she believed this property is in the Infill Area. She said, as a single family residence, they are required to have one parking space; but they are allowed to have 50% more than what is required. So, in the single family zone, they would only be allowed to have two parking spaces in the Infill Area.

Mr. Hawes asked if this would be the case even with four unrelated people living in it. Ms. Brown said if it's being used as a single family dwelling, that would be their parking allowance in the Infill Area. Mr. Hawes noted that a lot of tickets would be written for numerous properties along Kentucky Avenue. Ms. Brown said she wasn't sure if they already have a parking area.

In response, Ms. Boland said there are a lot of nuances in terms of whether they had a parking area that was in existence prior to the establishment of the Infill and Redevelopment regulations, in which case they would be able to maintain that. She said she thought they had room for at least three or four cars in the back. But with respect to its use in the P-1 zone, they would be restricted as to how large the office could be and how many dwelling units they could have by the amount of parking they could fit on the property.

Mr. Stout asked if, when speaking of "single family", there is a particular number of family members that can live in the house. Ms. Boland replied that related families are not restricted.

Mr. Hawes related his understanding, with regard to the pending proposal, that the limit of 4 pertains to persons unrelated by blood or marriage. Ms. Boland responded that was correct.

Action – A motion was made by Mr. Stout, and seconded by Ms. Moore to approve **A-2010-37: MICHAEL MORRISON** (an administrative review to determine that a single-family residential use should be allowed as a continuation of a nonconforming use in a Professional Office/Historic District Overlay [P-1/H-1] zone on property located at 171 Woodland Avenue) as recommended by the staff.

The votes were as follows:

Ayes: Stout, Moore, Meyer, White

Nays: Griggs, Brown

Absent: Stumbo

The motion for approval carried, 4 to 2.

2. **A-2010-38: BRIAN A. LACON / COLEMAN GROUP PROPERTIES** – appeal for an administrative review to allow a free-standing business sign with tenant listings in lieu of an entrance identification sign, in a Professional Office (P-1) zone, on property located at 1792 Alysheba Way. (Council District 6)

The Staff Recommended: Disapproval, and that the Division of Building Inspection be upheld, for

the following reasons:

- a. Pursuant to Article 17-8(a) of the Zoning Ordinance, the Board of Adjustment is not authorized to grant an appeal that would increase the total permitted sign area on a single lot or building. The proposed sign of 100 square feet exceeds the maximum size of 40 square feet that is permitted for a freestanding business sign in a P-1 zone.
- b. The proposed sign cannot be permitted as a project identification sign for the Hamburg Place office Park, because the principal purpose and function would be to have tenant listings rather than to name the office park, and such a sign currently exists at the corner of Pink Pigeon Parkway and Alysheba Way, at the park's main vehicular entrance.

Representation – Mr. Bob Cole, with the Coleman Group, was present.

Presentation - Mr. Marx submitted a letter of opposition for the Board's review, as well as a photo of the office building at the corner of Man O' War Boulevard and Pink Pigeon Parkway, in a Professional Office (P-1) zone. He said this request relates to a proposed freestanding sign for the property, which is allowed a freestanding business sign of 40 square feet; and that the proposed sign, which would include tenant listings, is more than double the allowable size (between 80 and 100 square feet). Mr. Marx noted that the Board is not authorized to grant an appeal that would increase the total permitted square footage of signage on a lot or building. As an alternative, the appellant is asking the Board to consider calling the sign a project identification sign for a professional office project. Such a sign is allowed up to 100 square feet, but it can only identify the name of the office project rather than listing tenants as the appellant has requested. Mr. Marx said there already is an existing identification sign for the Hamburg Place Office Park. He said the proposed sign is too large to be the type of sign that could have tenant listings; and as a larger sign, it would allow just the identification of the office building. Since only one sign is allowed for the office park, not for each property in the office park, the staff was unable to support this request.

Mr. Stout asked (staff) whether any consideration was given to reducing the size of the sign with tenant listings. Mr. Marx said the applicant would have to go down to 40 square feet which, from their perspective, probably was much smaller than what they desired. Mr. Stout asked if Mr. Cole would agree to do that. Mr. Cole responded that he wasn't saying that it couldn't be done; but what he was trying to do through this process is find out exactly what would be permissible, and whether there was any type of flexibility. He said they thought the design that was presented fit in architecturally with the development; and what they are looking for is an opportunity to provide signage for companies that desire to be in the office park. He said they absolutely agree with the statements from the staff; but they are asking what options are available to them. This is a specific request from large tenants looking to expand their businesses and move to this location, and it's important for them to have some kind of road visibility. He said that, clearly, they are limited to the amount of building signage that they can have, having two signs on the building. He said they started down this road in hopes of finding a solution they might not be aware of, and that was the intent.

Since the proposed sign is too large, Mr. Stout asked whether it could be smaller than what the applicant is requesting, with the tenant sign illuminated. Mr. Sallee responded that he believed that was correct. He stated that, as the result of a meeting this morning with other LFUCG staff, they became aware of at least one other location that has a smaller sign with tenant listings in the P-1 zone. He said if the sign in question were 40 square feet, that type of sign would be permitted without an appeal to the Board. Mr. Stout asked whether that type of sign with the tenants illuminated would be acceptable to Mr. Cole. Mr. Cole related his understanding that a sign of 40 square feet, in total, would be allowed. For clarification, he asked whether that could be done with the existing identification sign at the entrance, which is less than 40 square feet. Referring to a photo of the existing identification sign on the property that he furnished, Mr. Cole then asked if that would have to be removed to be allowed to have the 40 square-foot tenant identification sign under discussion. He oriented the Board to where this sign is located, at Alysheba Way and Pink Pigeon Parkway. In response to Mr. Cole's inquiry, Mr. Sallee said, according to 17-7(e) of the Ordinance, that freestanding signs are limited to one per building. For clarification, Mr. Stout inquired whether the applicant wanted to have two other signs along with the existing identification sign. Mr. Cole replied that just one other sign was needed, along the Man O' War side of the office building, which had been requested by a prospective tenant.

Chairman Brown queried whether, based on the other signage, there was any unused sign space that could be transferred. Mr. Marx said he didn't think so, with regard to the freestanding signage issue; and that he wasn't sure if Mr. Cole had looked into the allotted wall signage. He noted that there is an Anthem sign as well as a university sign of some sort on the back wall. Mr. Cole pointed out that the university sign does not conform and eventually will be removed from the building (by the tenant). He said even when it is removed, to his understanding, only two signs per building are allowed. Chairman Brown commented that the Board simply was not authorized to grant the applicant's request for additional signage or sign area. Mr. Cole said he understood, but asked if there was a process or another step that could be taken in the event of the Board's disapproval. Mr. Marx responded that, as far as appealing the Board's decision, it would have to go through Circuit Court.

Mr. Griggs stated that one other available option would be to pursue a text amendment, noting the difficulty the Sign Ordinance presents in some instances. It was suggested that Mr. Cole, if he was interested in doing so, could contact Mr. Marx for assistance.

Mr. Marx suggested possibly relocating the existing identification sign, which could have tenant listings on it. He said, from looking at the photo, that the sign appeared to be rather large in terms of square footage. Mr. Cole said, according to Greg Walker in Building Inspection, the sign is 38 square feet, although he thought it was larger than that. In response to Mr. Stout's inquiry, Mr. Cole said he thought he would be allowed to relocate the sign in question, assuming it is less than 40 square feet; but for clarification, he asked Mr. Marx whether relocating this sign to the front of the building on Man O' War and listing the tenants on it would be acceptable. Mr. Marx responded that he thought so, but there would still be sight distance issues and setbacks to comply with on the other corner. Mr. Cole was encouraged to discuss this alternative with Greg Walker, after which he thanked the Board for their time and assistance.

Action – A motion was made by Ms. Moore, seconded by Ms. Meyer, and carried unanimously (Stumbo absent) to disapprove **A-2010-38: BRIAN A. LACON / COLEMAN GROUP PROPERTIES** (an administrative review to allow a freestanding business sign with tenant listings in lieu of an entrance identification sign in a Professional Office [P-1] zone on property located at 1792 Alysheba Way) for the reasons recommended by the staff.

3. **A-2010-41: REBECCA POWELL** – appeals for an administrative review to determine that a digital photography and art studio should be allowed as a home occupation in a Two-Family Residential/Historic District Overlay (R-2/H-1) zone, on property located at 346 South Upper Street. (Council District 3)

The Staff Recommended: Disapproval, and that the decision of the Division of Building Inspection be upheld, for the following reasons:

1. A "photo studio" (regardless of the type of materials and equipment used and manner of operation) is specifically prohibited by Article 1-11 of the Zoning Ordinance for consideration as a home occupation (conditional use).
2. Compelling arguments, documentation or information has not been presented by the appellant to justify that the proposed activity should not be treated as a "photo studio" as that term is used in the current Zoning Ordinance.

The Division of Building Inspection will report at the public hearing.

Representation – Ms. Rebecca Powell, appellant, was present. Chairman Brown asked the staff to make its presentation first in light of the recommendation of disapproval, after which he said Ms. Powell would be allowed to respond.

Presentation – Mr. Marx made reference to Article 1-11 of the Zoning Ordinance pertaining to home occupations and the strict prohibition of photo studios, which was shown on the overhead. He said the property on South Upper Street is in an R-2 zone and does qualify for a number of home occupations as a conditional use; however, a photo studio is specifically identified in the definition of home occupations as one that is not eligible for consideration, along with barber shops, beauty and massage parlors, automobile repair, etc. He said, according to the submitted

application, there would be minimal customer traffic and no use of hazardous chemicals associated with the digital photo/digital art studio. This would be relevant to a conditional use provided the proposed use was considered as an allowable home occupation. Since this clearly is not the case, the staff was unable to support the appellant's request based on how the Ordinance is currently written.

Referring to the staff report, Mr. Griggs said it was recommended that the appellant pursue a text amendment; and in order to do so, they might need to know what the objection is for this prohibited use (e.g., customer traffic, chemical processing, etc.). Mr. Marx clarified that he didn't think a text amendment was recommended, but rather that it was provided as an option, along with a zone change, to allow the proposed use as a home occupation. He explained, with regard to the prohibition of this use in the Zoning Ordinance, that it was probably due to the type of chemicals used for film processing many years ago as well as the amount of customer traffic generated by the (photo studio) use.

Chairman Brown commented, to the appellant, that the Board could only grant what is allowed by the Ordinance; and since the proposed use is specifically excluded, it is ineligible for the Board's consideration of approval. Ms. Powell replied that she understood. In response to the Chairman's inquiry about the use she was proposing, Ms. Powell initially said she had an Art Degree from UK, but she didn't know whether the work she does would qualify as an art studio. She said a lot of her work would be done on location (i.e., weddings, parties, etc.); but she also wanted the option of having her clients come to her house because they liked the studio atmosphere (with backdrops, controlled lighting, etc.). One room of the house would be designated for the photo studio use. She said she has been working in a photo studio and wanted to be able to run her own business when it closes. The business hours would be from 10:00 a.m. until 3:00 p.m. during the week; and only one client per day would be coming to the home. Ms. Powell reiterated that she could change this to an art studio, since photography is in the genre of art, if that is the stipulation. Chairman Brown said, from Ms. Powell's description, this sounded like a typical photo studio, but he maintained that since this use is specifically not allowed, the Board would be unable to grant her request.

Ms. Powell queried whether changing (the request) from a photo studio to an art studio, because photography is an art, would be allowed since it is definitely not on the list of excluded uses. Chairman Brown said he thought, before this request was brought to the Board, that she would be well advised to discuss it with staff; and that it would be helpful to get the staff's approval beforehand, as in the cases where the staff's recommendation is for approval.

Mr. Stout asked if Ms. Powell was aware of the neighborhood association's opposition to her request. Ms. Powell responded no. Mr. Stout said it was mentioned in a letter from the Historic South Hill Neighborhood Association that they were unable to contact her for more information regarding the use she was proposing. He suggested that, for any future appeals brought to the Board, it probably would benefit her to contact the neighborhood association early on to discuss it. Ms. Powell pointed out that she didn't think anyone in the neighborhood would even notice her business operation, which would be equivalent to having one friend in a car coming to her home. She said, in her observation, most of the residents on her street would be at work during the week; and the business operation would be very low impact.

Mr. Marx commented that the challenge with calling this an art studio is whether there would be something especially unique about what the applicant will be doing; or if anyone who wants a photo studio could come in and say it is an art studio. Ms. Powell called attention to a couple of art photography studios in the area, one of which is located on Mill Street. She offered to provide photos for illustration. Mr. Griggs said he thought the zoning was different, if reference was being made to Lee Thomas' studio.

Mr. Oliver Powell, the appellant's husband, was present. He asked why a photo studio is specifically prohibited (as a home occupation). Mr. Marx replied that, in general, there is an expectation of a fair amount of customer traffic associated with the use; and that the prohibition may have originally had to do with the chemicals and the type of equipment that was used in the past. In response, Mr. Powell said he would have to challenge the fact that the photo studio would generate any more customer traffic than a lot of the other businesses in the area, like the

architect's office on Pine Street. Mr. Marx said that would be part of the argument if they decided to pursue a text amendment. Mr. Powell then asked whether a text amendment should be pursued or the submittal of a different application for an art studio. Mr. Sallee responded that the difficulty with an art studio would be basically the same as the Board is reviewing in this case, as far as the number of clients who would be coming there and having an impact on the neighborhood, which was a concern. He went on to say that defining a photo studio as an art studio may not be the best idea either, particularly if the activity that's intended is a space in a residence for clients to come and have their photos taken.

Mr. Griggs made the point that there are dozens of photo studios in this city, all located in areas that are properly zoned for that purpose; and to allow the appellant to operate a photo studio in her home means she would have none of the overhead that those other studios have, which didn't seem fair to them. Ms. Powell noted that the property is actually owned by her mother, to whom she pays rent.

Referring to the letter from the neighborhood association, Mr. Powell asked whether the lack of representation to present their case would have any bearing in the future. Mr. Stout said he didn't think it would have any bearing, and the letter was brought to their attention because it's always best to have the understanding and support of the neighborhood residents. Mr. Powell said he absolutely agreed. Chairman Brown noted that the Board was not basing their decision on what the neighborhood association was saying, but rather on what the law states, which is that the Board doesn't have the authority to grant the relief that was requested.

Action – A motion was made by Mr. Stout, seconded by Ms. Meyer, and carried unanimously (Stumbo absent) to disapprove **A-2010-41: REBECCA POWELL** (an administrative review to determine that a digital photography and art studio should be allowed as a home occupation in a Two-Family Residential/Historic District Overlay [R-2/H-1] zone on property located at 346 South Upper Street) as recommended by the staff, upholding the determination of the Division of Building Inspection.

- IV. **BOARD ITEMS** – The Chairman announced that any items a Board member wished to present would be heard at this time. There were none.
- V. **STAFF ITEMS** – The Chairman announced that any items a Staff member wished to present would be heard at this time.
- A. House bill 55 Training Opportunity – Mr. Sallee reminded the Board that there would be an APA audio conference on Wednesday, May 26, 2010, beginning at 4:00 p.m. in the Division of Planning Conference Room on the 7th floor of the Phoenix Building. The title of this training session was "Design Review for Officials", and would count toward 1.5 hours of training credit.
- VI. **NEXT MEETING DATE** – The Chairman announced that the next meeting date would be May 21, 2010.
- VII. **ADJOURNMENT** – Since there was no further business, the Chairman declared the meeting adjourned at 3:07 p.m.

Peter Brown, Chairman

James Griggs, Secretary

